

General Information Letter: Unsupported statement that separate accounting more accurately reflects business activities in Illinois is insufficient to grant petition to use separate accounting.

September 21, 1999

Dear:

This is in response to your letter dated September 16, 1999, in which you request permission for xx to use an alternative method of apportionment, pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 et seq.). The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter you have stated the following:

This request to use the direct or separate accounting method rather than the apportionment method in preparing the Illinois Partnership Replacement Tax Return (Form IL-1065) to determine the proper amount of Illinois income to be allocated to each of the partners is respectfully submitted by xx and relates to the taxable year ended December 31, 1998 and all subsequent tax years. The partnership's federal employer identification number is xxxxxxxxxx. The partnership will be filing an Illinois Composite Income and Replacement Tax Return (Form IL-1023-C) on behalf of all partners who elect to be included from its 60 eligible nonresident individual partners. The partners are residents of several different states, but the majority are residents of xxxx.

The partnership's business activities consist of acquiring existing or developing nonresidential rental real estate, financing and leasing such real estate, and disposing of such real estate as necessary in order to meet the real estate needs of other businesses. Detailed accounting records are maintained on a property-by-property basis. Although the properties are located in many different states, it is easy to determine the income associated with any one property at all times because separate accounting records are maintained for each and every rental real estate property. Therefore, the partnership will know exactly how much tax is due in Illinois on behalf of any partner if separate accounting is allowed. If apportionment is required, it will be very hard to determine how much of each partner's periodic distributions need to be reserved to pay their share of taxes with the Illinois composite return. Additionally, separate accounting is the most accurate way for the nonresident partner taxpayers to pay their fair share of tax in Illinois, as well as for the State of Illinois to collect its fair share from the taxpayers.

#### **Response**

Section 304(f) of the IITA provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not fairly represent the extent

of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, a copy of which is enclosed.

Your request fails to meet the most important substantive provision of that regulation, because it fails to make any showing that the statutory apportionment method does not "fairly represent the extent of the person's business activity in this State." 86 Ill. Adm. Code Section 100.3390(c) describes the burden of proof for making this showing.

Your request contains no facts that would support a conclusion that separate accounting is appropriate. For example, you do not address the issues of how administrative, property management and financing expenses are allocated among the various properties under separate accounting or explain why such allocation better reflects the extent of the taxpayer's business activity in Illinois than does the statutory apportionment method. Accordingly, your petition cannot be granted at this time.

Please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. A petition filed September 16, 1999, will only allow a taxpayer to use the requested method on original returns due on or after January 14, 2000.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please supplement your petition so that it complies with the provisions of 86 Ill. Adm. Code Section 100.3390.

Sincerely,

Paul S. Caselton  
Deputy Chief Counsel -- Income Tax